

By: **Senator Gladden**

Introduced and read first time: February 6, 2004

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 2004

CHAPTER _____

1 AN ACT concerning

2 **Children in Need of Assistance - Custody and Guardianship**

3 FOR the purpose of authorizing a juvenile court to grant custody and guardianship of
4 certain children to certain individuals; providing for the effect of an order
5 granting custody and guardianship; authorizing the court to order certain
6 reviews after granting custody and guardianship to an individual; requiring
7 certain considerations before the court grants custody and guardianship;
8 prohibiting the court from entering an order granting custody and guardianship
9 before a certain time; requiring the court to see a certain child in person before
10 the court concludes a permanency plan review hearing; making clarifying
11 changes; altering the purpose of the Court-Appointed Special Advocate
12 Program; altering the permanency plans that a local department of social
13 services is required to consider for a child in an out-of-home placement;
14 requiring the Social Services Administration to adopt certain regulations;
15 requiring certain individuals to obtain a criminal history records check; and
16 generally relating to custody and guardianship of certain children.

17 BY repealing and reenacting, without amendments,
18 Article - Courts and Judicial Proceedings
19 Section 3-819(b) and (c) ~~and 3-823(e) and (h)(1)~~
20 Annotated Code of Maryland
21 (2002 Replacement Volume and 2003 Supplement)

22 BY adding to
23 Article - Courts and Judicial Proceedings
24 Section 3-819.2
25 Annotated Code of Maryland

1 (2002 Replacement Volume and 2003 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article - Courts and Judicial Proceedings

4 Section 3-823(e) and (h)(1) and 3-830(b)

5 Annotated Code of Maryland

6 (2002 Replacement Volume and 2003 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article - Family Law

9 Section 5-525(e) and (i) and 5-561(c)

10 Annotated Code of Maryland

11 (1999 Replacement Volume and 2003 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article - Courts and Judicial Proceedings**

15 3-819.

16 (b) In making a disposition on a CINA petition under this subtitle, the court
17 shall:

18 (1) Find that the child is not in need of assistance and, except as
19 provided in subsection (e) of this section, dismiss the case; or

20 (2) Find that the child is in need of assistance and:

21 (i) Not change the child's custody status; or

22 (ii) Commit the child to the custody of:

23 1. A parent, relative, or other individual on terms the court
24 considers appropriate; or

25 2. A local department, the Department of Health and Mental
26 Hygiene, or both, on terms that the court considers appropriate, including designation
27 of the type of facility where the child is to be placed.

28 (c) In addition to any action under subsection (b)(2) of this section, the court
29 may:

30 (1) (i) Place a child under the protective supervision of the local
31 department on terms the court considers appropriate;

32 (ii) Grant limited guardianship to the department or an individual
33 or both for specific purposes including medical and educational purposes or for other

1 appropriate services if a parent is unavailable, unwilling, or unable to consent to
2 services that are in the best interest of the child; or

3 (iii) Order the child and the child's parent, guardian, or custodian to
4 participate in rehabilitative services that are in the best interest of the child and
5 family; and

6 (2) Determine custody, visitation, support, or paternity of a child in
7 accordance with § 3-803(b) of this subtitle.

8 3-819.2.

9 (A) SUBJECT TO SUBSECTION (E) OF THIS SECTION, THE COURT MAY GRANT
10 CUSTODY AND GUARDIANSHIP TO A RELATIVE OR A NONRELATIVE UNDER THIS
11 SUBTITLE.

12 (B) AN ORDER GRANTING CUSTODY AND GUARDIANSHIP TO AN INDIVIDUAL
13 UNDER THIS SECTION TERMINATES THE LOCAL DEPARTMENT'S LEGAL OBLIGATIONS
14 AND RESPONSIBILITIES TO THE CHILD.

15 (C) A GUARDIAN APPOINTED UNDER THIS SUBTITLE HAS LEGAL CUSTODY OF
16 THE CHILD UNLESS THE COURT THAT APPOINTS THE GUARDIAN GIVES LEGAL
17 CUSTODY TO ANOTHER PERSON.

18 (D) AFTER GRANTING CUSTODY AND GUARDIANSHIP TO AN INDIVIDUAL
19 UNDER THIS SECTION, THE COURT MAY ORDER ANY FURTHER REVIEWS THAT THE
20 COURT DETERMINES TO BE IN THE CHILD'S BEST INTERESTS, CONSISTENT WITH §
21 3-823(H)(1)(III) OF THIS SUBTITLE.

22 (E) BEFORE GRANTING CUSTODY AND GUARDIANSHIP UNDER THIS SECTION,
23 THE COURT SHALL CONSIDER:

24 (1) ANY ASSURANCE BY THE LOCAL DEPARTMENT THAT IT WILL
25 PROVIDE FUNDS FOR NECESSARY SUPPORT AND MAINTENANCE FOR THE CHILD;

26 (2) ALL FACTORS NECESSARY TO DETERMINE THE BEST INTERESTS OF
27 THE CHILD; AND

28 (3) (I) A REPORT BY A LOCAL DEPARTMENT OR A LICENSED CHILD
29 PLACEMENT AGENCY, COMPLETED IN COMPLIANCE WITH REGULATIONS ADOPTED
30 BY THE DEPARTMENT OF HUMAN RESOURCES, ON THE SUITABILITY OF THE
31 INDIVIDUAL TO BE THE GUARDIAN OF THE CHILD.

32 (II) THE REPORT SHALL INCLUDE A:

33 1. HOME STUDY;

34 2. CHILD PROTECTIVE SERVICES HISTORY;

35 3. CRIMINAL HISTORY RECORDS CHECK; AND

1 (h) (1) (i) Except as provided in subparagraphs (ii) and (iii) of this
2 paragraph, the court shall conduct a hearing to review the permanency plan at least
3 every 6 months until commitment is rescinded or a voluntary placement is
4 terminated.

5 (ii) The court shall conduct a review hearing every 12 months after
6 the court determines that the child shall be continued in out-of-home placement with
7 a specific caregiver who agrees to care for the child on a permanent basis.

8 (iii) 1. Unless the court finds good cause, a case shall be
9 terminated after the court grants custody and guardianship of the child to a relative
10 or other individual.

11 2. If the court finds good cause not to terminate a case, the
12 court shall conduct a review hearing every 12 months until the case is terminated.

13 3. THE COURT MAY NOT CONCLUDE A REVIEW HEARING
14 UNDER SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH UNLESS THE COURT HAS
15 SEEN THE CHILD IN PERSON.

16 3-830.

17 (b) (1) There is a Court-Appointed Special Advocate Program.

18 (2) The purpose of the Program is to provide volunteers whose primary
19 purpose is to ensure [that children who are the subject of a CINA proceeding are
20 provided with] THE PROVISION OF appropriate service and case planning [that is in
21 their] CONSISTENT WITH THE best [interest] INTERESTS OF:

22 (I) A CHILD WHO IS THE SUBJECT OF A CINA PROCEEDING; OR

23 (II) A CHILD WHO IS THE SUBJECT OF A GUARDIANSHIP
24 PROCEEDING UNDER § 3-819.2 OF THIS SUBTITLE.

25 (3) The Administrative Office of the Courts:

26 (i) Shall administer the Program;

27 (ii) Shall report annually to the Chief Judge of the Court of Appeals
28 and, subject to § 2-1246 of the State Government Article, to the General Assembly
29 regarding the operation of the Program; and

30 (iii) May adopt rules governing the implementation and operation of
31 the Program including funding, training, selection, and supervision of volunteers.

Article - Family Law

2 5-525.

3 (e) (1) In developing a permanency plan for a child in an out-of-home
4 placement, the local department of social services shall give primary consideration to
5 the best interests of the child. The local department shall consider the following
6 factors in determining the permanency plan that is in the best interests of the child:

7 (i) the child's ability to be safe and healthy in the home of the
8 child's parent;

9 (ii) the child's attachment and emotional ties to the child's natural
10 parents and siblings;

11 (iii) the child's emotional attachment to the child's current caregiver
12 and the caregiver's family;

13 (iv) the length of time the child has resided with the current
14 caregiver;

15 (v) the potential emotional, developmental, and educational harm
16 to the child if moved from the child's current placement; and

17 (vi) the potential harm to the child by remaining in State custody
18 for an excessive period of time.

19 (2) To the extent consistent with the best interests of the child in an
20 out-of-home placement, the local department shall consider the following
21 permanency plans, in descending order of priority:

22 (i) returning the child to the child's parent or guardian, unless the
23 department is the guardian;

24 (ii) placing the child with relatives to whom adoption [,] OR
25 CUSTODY AND guardianship, [or care and custody,] in descending order of priority,
26 are planned to be granted;

27 (iii) adoption in the following descending order of priority:

28 1. by a current foster parent with whom the child has resided
29 continually for at least the 12 months prior to developing the permanency plan or for
30 a sufficient length of time to have established positive relationships and family ties;
31 or

32 2. by another approved adoptive family;

33 (IV) PLACING THE CHILD IN ANOTHER PLANNED PERMANENT
34 LIVING ARRANGEMENT;

1 ~~(iv)~~ (V) placing the child [in a court approved permanent foster
2 home with a specific caregiver] WITH A NONRELATIVE GUARDIAN; OR

3 ~~(v)~~ (VI) [an independent living arrangement; or

4 (vi) long-term foster care] CONTINUATION IN A SPECIFIED
5 PLACEMENT ON A PERMANENT BASIS BECAUSE OF THE CHILD'S SPECIAL NEEDS OR
6 CIRCUMSTANCES.

7 (i) The Administration shall adopt regulations that:

8 (1) [for the 12-month period beginning on October 1, 1983, and for each
9 subsequent 12-month period, establish specific goals as to the maximum number of
10 children who will remain in foster care for more than 2 years] ESTABLISH GOALS AND
11 SPECIFY PERMANENCY PLANNING PROCEDURES THAT:

12 (I) MAXIMIZE THE PROSPECT FOR REDUCING LENGTH OF STAY IN
13 OUT-OF-HOME PLACEMENT IN THE BEST INTERESTS OF CHILDREN; AND

14 (II) IMPLEMENT THE INTENT OF THIS SECTION;

15 (2) prohibit a local department from seeking the custody or guardianship
16 of a child for placement in foster care solely because the child's parent or guardian
17 lacks shelter or solely because the child's parents are financially unable to provide
18 treatment or care for a child with a developmental disability or mental illness; [and]

19 (3) require the local department to make appropriate referrals to
20 emergency shelter and other services for families with children who lack shelter;

21 (4) ESTABLISH CRITERIA FOR INVESTIGATING AND APPROVING FOSTER
22 HOMES; AND

23 (5) FOR CASES IN WHICH THE PERMANENCY PLAN RECOMMENDED BY
24 THE LOCAL DEPARTMENT OR UNDER CONSIDERATION BY THE COURT INCLUDES
25 APPOINTMENT OF A GUARDIAN AND RESCISSION OF THE LOCAL DEPARTMENT'S
26 CUSTODY OR GUARDIANSHIP OF A CHILD:

27 (I) ESTABLISH CRITERIA FOR INVESTIGATING AND DETERMINING
28 THE SUITABILITY OF PROSPECTIVE RELATIVE OR NONRELATIVE GUARDIANS; AND

29 (II) REQUIRE THE FILING OF A REPORT WITH THE COURT AS
30 PROVIDED IN § 3-819.2 OF THE COURTS ARTICLE.

31 5-561.

32 (c) The following individuals shall obtain a criminal history records check
33 under this Part VI of this subtitle:

34 (1) an individual who is seeking to adopt a child through a local
35 department of social services or licensed child placement agency;

1 (2) AN INDIVIDUAL WHO IS SEEKING TO BECOME A GUARDIAN
2 THROUGH A LOCAL DEPARTMENT OF SOCIAL SERVICES;

3 (3) AN INDIVIDUAL WHOM THE JUVENILE COURT APPOINTS AS A
4 GUARDIAN OF A CHILD;

5 [(2)] (4) an adult relative with whom a child, committed to a local
6 department of social services, is placed by the local department of social services;

7 [(3)] (5) any adult known by a local department of social services to be
8 residing in a:

9 (i) family day care home required to be registered under Title 5 of
10 this article;

11 (ii) home of an adult relative of a child with whom the child,
12 committed to a local department of social services, is placed by the local department of
13 social services;

14 (iii) foster care home or child care home required to be approved
15 under Title 5 of this article; or

16 (iv) home of an individual seeking to adopt a child through a local
17 department of social services or a licensed child placement agency; and

18 [(4)] (6) if requested by a local department of social services:

19 (i) a parent or guardian of a child who is committed to the local
20 department and is or has been placed in an out-of-home placement within the past
21 year; and

22 (ii) any adult known by the local department to be residing in the
23 home of the parent or guardian.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2004.